

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58029; File No. SR-NASDAQ-2008-053)

June 26, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Definition of “Independent Director”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 6, 2008, The NASDAQ Stock Market LLC (“Nasdaq”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 4200(a)(15)(B) and IM-4200 to modify Nasdaq’s definition of “independent director.” Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is available at Nasdaq, at the Commission’s Public Reference Room, and on Nasdaq’s Web site at <http://nasdaq.complinet.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to modify Nasdaq's definition of an "independent director."

Nasdaq's rules generally preclude a director from being considered independent if the director has received more than \$100,000 in compensation from the issuer.³ When Nasdaq first adopted this rule in 1999, the threshold was \$60,000, which was chosen to be consistent with the \$60,000 disclosure threshold set by the Commission in Regulation S-K, Item 404.⁴ In August 2006, the Commission adopted final rules raising the threshold in Regulation S-K, Item 404 from \$60,000 to \$120,000.⁵ Following this change to the SEC's rules, Nasdaq, as an intermediate step, increased the threshold in its independence definition from \$60,000 to \$100,000,⁶ which was consistent with the threshold in the comparable rule of the New York Stock Exchange, Inc. ("NYSE").⁷

On June 8, 2007, NYSE amended a prior rule proposal filed with the Commission regarding changes to certain of its corporate governance requirements.⁸ In the amendment,

³ Nasdaq Rule 4200(a)(15)(B).

⁴ The rule filing stated that "... Nasdaq believes that a compensation threshold of \$60,000 is appropriate as it corresponds to the de minimis threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S-K, Item 404." See Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

⁵ See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

⁶ See Securities Exchange Act Release No. 55463 (March 13, 2007), 72 FR 13327 (March 21, 2007).

⁷ See Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

⁸ See Amendment No. 1 to File No. SR-NYSE-2005-81.

NYSE proposed increasing the threshold in its independence definition from \$100,000 to \$120,000. In its statement of the purpose of its proposal, NYSE explained that “[t]his change reflects the SEC’s recent amendment to the dollar threshold applicable to related party transactions that must be disclosed under Item 404 of Regulation S-K.”⁹

Nasdaq believes that the monetary threshold in its independence definition should be consistent with the amount in Regulation S-K, Item 404. Using a consistent standard would enhance Nasdaq’s ability to assess compliance with the independent director requirements because companies are required to disclose compensation in excess of \$120,000, but are not necessarily required to disclose compensation between \$100,000 and \$120,000. Finally, Nasdaq believes that its rules and the NYSE rules should be consistent with regard to the definition of an independent director. As such, and given that Nasdaq’s objective has always been to make its independence threshold consistent with the SEC’s disclosure threshold in Regulation S-K, Item 404, Nasdaq is proposing to increase its independence threshold from \$100,000 to \$120,000.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ in particular. Section 6(b)(5) of the Act requires, among other things, that Nasdaq’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change is

⁹ Id., citing Securities Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

consistent with these requirements in that it will conform Nasdaq's requirement to SEC disclosure requirements and proposed NYSE rule changes, and provide a standard that is clear, straightforward, and easy for issuers to understand and apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

